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**FILED**

**MAR 10 2005**

**COMPLAINT OF INDIANA BELL TELEPHONE  
COMPANY, INCORPORATED D/B/A SBC  
INDIANA FOR EXPEDITED REVIEW OF A  
DISPUTE WITH CERTAIN CLECS REGARDING  
ADOPTION OF AN AMENDMENT TO  
COMMISSION APPROVED  
INTERCONNECTION AGREEMENTS**

**INDIANA UTILITY  
REGULATORY COMMISSION  
CAUSE NO. 42749**

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

On March 8, 2005, NuVox Communications of Indiana, Inc. ("NuVox"), a Respondent in this proceeding, filed its *Motion for Emergency Order to Enforce the Commission's January 21, 2005 Entry and Its Interconnection Agreement with SBC Indiana* ("Motion") with the Indiana Utility Regulatory Commission ("Commission"). The Motion asserts that the Complainant in this Cause, Indiana Bell Telephone Company, Incorporated d/b/a/ SBC Indiana ("SBC Indiana") has stated that on or after March 11, 2005, it intends to not provision certain orders for DS1 and DS3 loops, DS1 and DS3 transport, and dark fiber. Such action, according to NuVox, will cause it irreparable harm and will breach SBC Indiana's currently effective, Commission-approved interconnection agreement with NuVox. NuVox requests that the Commission, on or before March 10, 2005, issue a directive requiring SBC Indiana to (1) continue accepting and processing the orders for dark fiber, DS1 loops and transport, and DS3 loops and transport, under the rates, terms and conditions of NuVox's Interconnection Agreement from and between all wire centers in SBC Indiana's operating territory, and (2) comply with the change of law provisions of NuVox's Interconnection Agreement with regard to the implementation of the Federal Communication Commission's ("FCC's") *Triennial Review Remand Order* ("TRRO")<sup>1</sup> before implementing the Accessible Letters issued by SBC Indiana. SBC Indiana filed a Response to the Motion on February 9, 2005. This Response has not yet been considered.

It appears that this emergency Motion could have been filed in a timelier manner since the Accessible Letters that are of concern to NuVox were issued by SBC Indiana on February 11, 2005. In any event, the Presiding Officers find that the Motion needs to be fully briefed and considered before ruling on the Motion. Therefore, NuVox's request for a ruling on the Motion within two days of when the Motion was filed is insufficient time for us to consider all of the information necessary to issue a ruling. And even

<sup>1</sup> Order on Remand, *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No.01-338, 2005 WL 289015 (FCC Feb. 4, 2005).

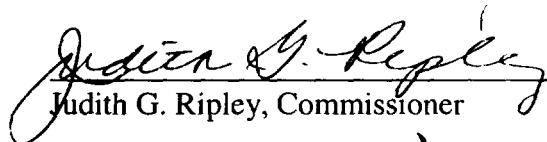
though we issued a Docket Entry in this Cause on March 9, 2005, ruling on a similar emergency motion by other CLEC Respondents on the issue of the continued provisioning of UNE-P in light of the TRRO, we find it appropriate to allow time for the parties to fully present their positions.


Our initial review of the Motion, however, reveals an issue that we think should, at least on an interim basis, be addressed prior to March 11, 2005, in order to avoid the possibility of undue harm to NuVox. The Motion states that SBC has identified to the FCC certain specific wire centers in Indiana for or between which it will not provide DS1/DS3/dark fiber loops or transport. It is our reading of the Motion that NuVox is maintaining that some of these specified wire centers would qualify as impaired pursuant to the criteria established in parts V and VI the TRRO, thereby entitling NuVox to unbundled access to these elements at these wire centers. The TRRO, at ¶ 234, establishes a process whereby a CLEC in requesting unbundled access to dedicated transport and high-capacity loops must self-certify in its request that it is entitled to unbundled access pursuant to the criteria set forth in the TRRO. Upon receipt of such a request the ILEC is required to provision the element, though it can subsequently challenge its obligation to provide access through the dispute resolution process of its interconnection agreement. An ILEC, therefore, is not entitled to deny access to dedicated transport and high-capacity loops based on its determination that unbundled access is not required under TRRO.

Accordingly, as of March 11, 2005, SBC Indiana should not deny a request by NuVox for unbundled access to high-capacity loops or dedicated transport based on a SBC determination that access is not required at the relevant wire center(s). Both SBC Indiana and NuVox should follow the provisioning procedures set forth in ¶ 234 of the TRRO. This interim ruling on the Motion will be further addressed in a final ruling.

In order to provide a reasonable time in which to respond, any additional Response to the Motion should be filed on or before March 14, 2005. Any Reply to the Response should be filed on or before March 17, 2005.

**IT IS SO ORDERED.**

  
Judith G. Ripley, Commissioner

  
William G. Divine, Administrative Law Judge

3-10-05  
Date